

## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND CONTRACT FOR SERVICES

### 1 DEFINITIONS

#### 1.1 In these Conditions:

- 1.1.1 **Contract** means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these conditions, and any other documents (or parts thereof) specified in the Purchase Order but under no circumstances shall include any or any reference to the Supplier's terms and conditions which are expressly excluded from the Contract.
- 1.1.2 **Contractor** means the person or company who is to provide the Service under the Contract as detailed on the Purchase Order.
- 1.1.3 **Customer Materials** means all (if any) materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier.
- 1.1.4 **Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the United Kingdom ("UK") including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 1.1.5 **Deliverables** means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- 1.1.6 **Delivery Date** means the date on which the Goods or Service are to be delivered to the Purchaser.
- 1.1.7 **Goods** means the Goods (or any part of them) supplied to the Purchaser by the Supplier set out in the Purchase Order.
- 1.1.8 **Intellectual Property Rights** means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.1.9 **Premises** means the location where the Services are to be performed.
- 1.1.10 **Price** means the Price of the Goods or Services as specified in the Purchase Order.
- 1.1.11 **Purchaser** means Ivy Education Trust and its schools.
- 1.1.12 **Purchase Order** means the document setting out the Purchaser's requirements for the supply of Goods and/or Services.
- 1.1.13 **Services** means the services to be provided as specified in the Purchase Order (or as otherwise agreed in writing between the parties), including any materials, articles and goods to be supplied under the Contract.

- 1.1.14 **Staff** means the Contractor and its employees, agents and sub-contractors.
- 1.1.15 **Supplier** means the person or company who is the Supplier of the Goods and/or Services named in the Purchase Order.
- 1.1.16 **UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 1.1.17 **Working Day** means a day that the school is open unless agreed otherwise in advance.
- 1.2 The headings in these Conditions are for convenience only.

## **2 VARIATION OF GOODS AND SERVICES**

- 2.1 These Conditions may only be varied with the written agreement of the Purchaser which consent shall not be unreasonably withheld.
- 2.2 The Purchaser reserves the right by reasonable notice to the Supplier to vary the Goods or Services detailed in the Purchase Order and any alteration to the Price or Delivery Date arising by reason of such modification shall be agreed between the parties and evidenced in writing.
- 2.3 The Contract shall become binding, and these Conditions shall be deemed to have been accepted by the Supplier on the acceptance of the Purchase Order by the Supplier (either verbally or in writing) or on delivery of the Goods and/or Services, whichever is the earlier.
- 2.4 No terms or conditions submitted at any time by the Supplier shall form any part of the Contract. In the event of a conflict between any of these conditions and any specific term or condition (whether in the Contract or otherwise) referred to in the terms and conditions issued with the Purchase Order, the latter shall prevail.

## **3 SUPPLY OF GOODS**

- 3.1 The Supplier shall ensure that the Goods shall:
  - 3.1.1 correspond with their description and any Purchaser specification and/or regulations in force including licences or permits and in accordance with the terms of the Contract and
  - 3.1.2 be of satisfactory quality, performance and fit for any purpose and free from defects in materials and workmanship and in this respect the Purchaser relies on the Supplier's skill, effort and judgement.

## **4 DELIVERY OF GOODS**

- 4.1 The Goods shall be delivered to the delivery address named on the Purchase Order. Delivery shall be completed when the Goods have been unloaded at the point of delivery specified in the Purchase Order and delivery has been accepted by the Purchaser or its authorised representative.
- 4.2 The Goods shall be properly packaged and secured in such a manner as to be received in good condition and free from any or any material damage to the Goods. Any damage to Goods in transit can be refused by the Purchaser who shall be entitled to ask for and receive replacement Goods within an agreed period of time, or cancel the order, or receive an immediate refund whichever is most appropriate to the Purchaser.
- 4.3 Where any access to the Premises is necessary in connection with delivery or installation of the Goods, the Supplier or its sub-contractors shall at all times comply with the school's relevant Safeguarding Policy which can be found on their website.

- 4.4 If the Delivery Date is not met by the Supplier, the Purchaser can choose not to accept or pay for the Goods, or cancel all or part of the order, without affecting any other rights. The Purchaser can also buy substitute Goods and hold the Supplier responsible for any costs or losses caused by the delay and the necessity to purchase substitute Goods.
- 4.5 Failure by the Purchaser to exercise the option under clause 4.4 in respect of any part of a Purchase Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Purchase Order.
- 4.6 If Goods are delivered before the required Delivery Date, the Purchaser can refuse to take delivery or to charge for insurance and storage until the specified Delivery Date.
- 4.7 Unless the Purchase Order says otherwise, the Supplier is responsible for obtaining and paying for all export and import licences, taxes and duties. If the Goods come from outside the UK, the Supplier must provide accurate country of origin information and will be responsible for any extra duties or taxes if the origin is incorrect.
- 4.8 Title and risk in the goods shall pass to the Purchaser on completion of delivery.

## **5 INSPECTION OF PREMISES AND NATURE OF SERVICES**

- 5.1 The Contractor is deemed to have inspected the Premises before tendering or provided the Services so as to have understood the nature and extent of the Services to be carried out and satisfied itself in relation to all matters connected with the delivery of the Services and Premises.
- 5.2 The Purchaser shall, at the request of the Contractor, grant such access to the Premises as it may deem to be reasonable for the purpose of the Services and to provide such necessary information for the provision of the Services.
- 5.3 The Contractor shall not in any way be relieved from any of its obligations under the Contract on the ground that information is incorrect or insufficient and the Contractor shall make its own assessment as to the accuracy and adequacy of the information provided in relation to the Contract.

## **6 CONTRACTOR'S STATUS**

- 6.1 When providing any Service, the Contractor shall act as an independent Contractor, and not as the Purchaser's agent. The Contract shall not create the relationship of employer and employee, principal and agent or a partnership. The Contractor shall be responsible for all their own statutory payroll deductions and under no circumstances does the Purchaser assume any liability thereto.

## **7 CONTRACTOR'S PERSONNEL**

- 7.1 The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in the provision of the Services, properly trained, qualified and adequately skilled and able to perform the Services in timely and efficient manner.
- 7.2 The Contractor shall immediately notify the Purchaser if they have any concerns regarding the suitability or competency of any of its sub-contractors in respect of the Services rendered in connection with the Contract.
- 7.3 While on the Purchaser's premises, the Contractor, its employees and sub-contractors (or their employees), must undertake the Services in a professional manner, and comply with such rules, regulations and requirements as specified by the Purchaser including (but not limited to) those relating to security arrangements and the relevant School Safeguarding Policy which can be found on the Purchaser's website.

- 7.4 The Contractor shall ensure and be responsible for the security of the Customer Materials and the Purchaser's property whilst in its or their possession in the delivery of the Services in accordance with the Purchaser's reasonable security requirements.

## **8 SUPPLY OF SERVICES**

- 8.1 The Supplier must from the commencement date and for the duration of the Contract supply the Services in accordance with the terms of the Contract.
- 8.2 The Contractor shall make no delivery of the Goods and/or Services, materials, plant or other equipment to, nor commence any work on the Premises without first obtaining the prior written consent of the Purchaser.
- 8.3 The Contractor will have access to the Premises only as needed to perform the Services alongside any other agreed work. The Contractor must cooperate with others as reasonably required by the Purchaser.
- 8.4 The Contractor shall ensure that any goods procured for the purposes of the Services shall be of satisfactory quality, fit for their purpose and be free from defects in materials and workmanship.
- 8.5 The Purchaser reserves to itself at any time during delivery of the Goods and/or Services the right to instruct the Purchaser to:
- 8.5.1 remove from the Premises any person or materials that in the Purchaser's opinion violate Safeguarding rules or the Purchaser deems any materials hazardous, harmful and/or not in accordance with the Contract.
  - 8.5.2 substitute proper and suitable materials.
  - 8.5.3 remove and re-execute any work that in the Purchaser's opinion does not meet the Contract requirements, even if it has already been tested and paid for.
  - 8.5.4 terminate the contract with immediate effect.

## **9 TIME OF PERFORMANCE**

- 9.1 The Contractor shall start the Services on the agreed date or as set out in the Purchase Order or as otherwise agreed with the Purchaser (the "Agreed Date") and complete or continue the Services until complete. Time is of the essence in the delivery of the Services in accordance with the Agreed Date. The Purchaser can require the Contractor to perform the Services in a specific order if it would be more convenient to do so. If no such notice is given, the Contractor must submit detailed work schedules and progress reports as requested by the Purchaser.
- 9.2 If the Contractor fails to meet the Agreed Date, the Purchaser can choose to terminate the Services (in whole or part). The Purchaser can exercise this option at any time, even if it has previously accepted a delay, unless a written extension has been granted and not expired. If the Purchaser does not terminate part of the Contract, it does not waive the right to terminate other parts at any later stage of the Contract.

## **10 CHARGES AND PAYMENT**

- 10.1 The Supplier shall not increase the Price unless it is accepted by the Purchaser and agreed in writing before the execution of the Purchase Order. Once the Purchase Order has been accepted by the Supplier it shall be bound to deliver the Goods and/or Services at the price in the Purchase Order.
- 10.2 Goods will be supplied by the Supplier inclusive of all delivery, taxes and insurance costs.

- 10.3 Services will be provided inclusive of all associated costs in connection with the provision of the Service as stated in the Contract.
- 10.4 The Supplier will invoice for each delivery of Goods as per the Purchase Order, unless the Purchaser agrees otherwise in writing. The Purchaser agrees to pay a valid invoice submitted by the Supplier within 30 days of receipt, during the school's term time. The schools' term dates can be found on its website.
- 10.5 A valid invoice shall include the following:
- the Suppliers name, address, invoice number and date;
  - the Supplier's bank details and email for remittance;
  - that is for the correct sum as per the Purchase Order and show relevant VAT;
  - has the correct description of Goods and/or Services;
  - quote the relevant Purchase Order reference.
  - has the correct delivery address and school name.
- 10.6 The Purchaser has the right to withhold or deduct any money owed by the Supplier to the Purchaser from any payments due to the Supplier.
- 10.7 The Purchaser will only pay for Goods and/or Services in accordance with the Purchase Order or as otherwise agreed in writing between the parties.
- 10.8 No payment made by the Purchaser shall be seen as an acknowledgment that the Supplier has properly (or at all) fulfilled its obligations under the Contract.

## **11 FREE ISSUE GOODS OR EQUIPMENT**

- 11.1 If and in the event the Contractor brings equipment onto the Premises as part of the delivery of the Services, and if requested to do, the Purchaser shall consider if they are able to store them safely, with due regard to their insurance provisions, but in the event that they are not able to do so, the Supplier agrees to remove them from the Premises. On completion or cessation of the Contract or delivery of the Services any Supplier equipment must be removed from the Premises at no cost to the Purchaser.

## **12 INSPECTION, REJECTION AND GUARANTEE**

- 12.1 These terms and conditions do not change the Supplier's obligations under common law, statute, or any specific warranty or condition in the Purchase Order.
- 12.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements in the Purchase Order. Such notice shall be given within a reasonable time after delivery to the Purchaser of the relevant Goods. A repair or replacement shall be requested by the Purchaser and provided by the Supplier.
- 12.3 The Purchaser may by written notice to the Supplier reject any Services provided which fails to meet the requirements of the Contract or Purchase Order. Such notice shall be given within a reasonable time from commencement of the Contract. No further payment shall be made by the Purchaser to the Supplier until agreement has been reached between the parties in the redelivery of the Services.
- 12.4 The Supplier guarantees all Goods shall be free from all material defects for a period of 12 months under proper and normal use by the Purchaser. If any of the Goods are shown to be defective within the guarantee period, the Supplier undertakes to replace the Goods at their cost and expense.
- 12.5 Any Goods rejected by the Purchaser under clause 12.4 shall be collected by the Supplier and returned to them at their risk and expense.

## **13 INTELLECTUAL PROPERTY**

- 13.1 Unless the Goods are supplied based on designs provided by the Purchaser, the Supplier guarantees that the Goods will not infringe the Intellectual Property Rights of any third party.
- 13.2 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.
- 13.3 The Supplier cannot use or disclose any Customer Intellectual Property Rights including their connection to the Purchaser in the delivery of the Goods and/or Services without the Purchaser's prior written consent, including referring to the Purchaser or the Contract in any advertisement.

## **14 HEALTH AND SAFETY**

- 14.1 The Supplier guarantees to the Purchaser that:
  - 14.1.1 all necessary tests and checks have been or will be done before delivering the Goods to ensure they are safe and pose no risk to health or safety; and
  - 14.1.2 it has provided the Purchaser with enough information about the Goods' intended use and testing, as well as any conditions needed to ensure the Goods are safe and pose no health and safety risks when used.
- 14.2 The Supplier shall abide by the Health & Safety at Work Act 1974 (and any amendments or successor legislation) and all other relevant laws and regulations in the delivery of the Goods and/or Services. The Supplier hereby agrees to indemnify the Purchaser from any legal actions, claims, losses, costs, or expenses (including legal fees) that the Purchaser may face due to a breach of this clause by the Supplier.

## **15 INDEMNITY AND INSURANCE**

- 15.1 The Supplier shall indemnify the Purchaser against all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses) suffered or incurred by the Purchaser as a result of or in connection with:
  - 15.1.1 any claim that the supply, receipt or use of the Goods or Services (excluding the Customer Materials) infringes the Intellectual Property Rights of any third party.
  - 15.1.2 any claim by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods or Deliverables, to the extent that the defect is attributable to the acts or omissions of the Supplier; and
  - 15.1.3 any claim by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that the claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier.
- 15.2 During the term of the Contract and for a period of five years afterwards, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, property damage insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall produce to the Customer on demand both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 15.3 Nothing in these Conditions or the Contract limits either party's liability for death or personal injury due to negligence, or fraud or fraudulent misrepresentation.

## **16 CONFIDENTIALITY AND DATA PROTECTION**

- 16.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:
  - 16.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16.2; and
  - 16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 Neither party may use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 16.4 Each party shall comply with all requirements of the Data Protection Legislation.

## **17 TERMINATION**

- 17.1 Without affecting any other right or remedy available to it, the Purchaser may terminate the Contract for convenience by giving the Supplier one months' written notice.
- 17.2 In the event of a material breach of the Contract by either party, the non-breaching party may terminate the Contract with immediate effect by giving notice in writing.
- 17.3 The Purchaser may terminate the Contract immediately by giving notice in writing to the Supplier if at any time:
  - 17.3.1 the Supplier decides to wind up, apply for an administration order, or seeks a voluntary arrangement with its creditors.
  - 17.3.2 a receiver, liquidator, administrator, supervisor or administrative receiver is appointed in respect of the Supplier's property, assets or any part thereof.
  - 17.3.3 the court orders that the Supplier be wound-up or appoints for all or any part of the Supplier's assets.
  - 17.3.4 the Supplier cannot pay its debts in accordance with the Insolvency Act 1986;
  - 17.3.5 the Supplier (as an individual or partnership) is declared bankrupt or enters into any arrangement with its creditors.
- 17.4 This Clause 17 does not affect any part of the Contract that is meant to remain in force after the Contract is terminated.

## **18 FORCE MAJEURE**

- 18.1 Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving not less than seven days' written notice to the affected party.

## **19 ASSIGNMENT AND SUB-CONTRACTING**

- 19.1 The Supplier shall not without the prior written consent of the Purchaser assign or transfer any part of the Contract.
- 19.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

## **20 NOTICES**

- 20.1 Any notices under the Contract must be delivered in person or by email to the relevant School and/or Trust Office. The notice is considered served when delivered, and any notice period in the Contract will apply.

## **21 THIRD PARTY RIGHTS**

- 21.1 The Contract does not allow third parties to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

## **22 SEVERABILITY**

- 22.1 If any part of this Contract is unenforceable, it will be removed, but the rest of the Contract and any unaffected parts will still be valid and enforceable.

## **23 WAIVER**

- 23.1 No delay or omission by the Purchaser in exercising any of its rights under the Contract shall constitute a waiver of that right. Using a right partially does not prevent them from using it fully in the future.

## **24 LAW AND JURISDICTION**

- 24.1 The Contract and any dispute or claim related to it will be governed by the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract.